

relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because EPA's approval of this program does not impose any new regulatory requirements on small businesses, the Administrator certifies that it does not have an economic impact on any small entities affected.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the Pennsylvania Small Business Stationary Source Technical and Environmental Compliance Assistance Program must be filed in the United States Court of Appeals for the appropriate circuit by March 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Small business assistance program.

Dated: August 11, 1994.

**W.T. Wisniewski,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

#### Subpart NN—Pennsylvania

2. Section 52.2060 is added to read as follows:

#### § 52.2060 Small Business Assistance Program.

On February 1, 1993, the Secretary of the Pennsylvania Department of Environmental Resources submitted a plan for the establishment and implementation of the Small Business Assistance Program as a state implementation plan (SIP) revision, as required by Title V of the Clean Air Act Amendments. EPA approved the Small Business Assistance Program on March 6, 1995, and made it part of the Pennsylvania SIP. As with all components of the SIP, Pennsylvania must implement the program as submitted and approved by EPA.

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BILLING CODE 6560-50-P

#### 40 CFR Part 70

[AD-FRL-5134-2]

#### Clean Air Act Final Interim Approval of the Operating Permits Program; Washoe County District Health Department, Nevada

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is promulgating interim approval of the operating permits program submitted by the Washoe County District Health Department (Washoe or District) for the purpose of complying with Federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

**EFFECTIVE DATE:** March 6, 1995.

**ADDRESSES:** Copies of the District's submittal and other supporting information used in developing the final interim approval are available for inspection (docket number NV-WSH-94-1-OPS) during normal business hours at the following location: U.S. Environmental Protection Agency,

Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

#### FOR FURTHER INFORMATION CONTACT:

Celia Bloomfield (telephone 415/744-1249), Mail Code A-5-2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Purpose

Title V of the Clean Air Act (Act), and implementing regulations at 40 CFR part 70 require that states develop and submit operating permit programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On August 24, 1994, EPA proposed interim approval of the operating permits program for Washoe County, Nevada. See 59 FR 43523. The August 24, 1994 **Federal Register** document also proposed approval of Washoe's interim mechanism for implementing section 112(g) and program for delegation of section 112 standards as promulgated. Public comment was solicited on these proposed actions. EPA received one comment on the section 112(g) proposal and is responding to that comment in this document and in a separate "Response to Comments" document that is available in the docket. The proposed actions have not been altered as a result of public comment or for any other reason. Hence, this final rule is granting interim approval to Washoe's operating permits program and approving the 112(g) and 112(l) mechanisms noted above.

##### II. Final Action and Implications

###### A. Analysis of State Submission

Washoe's title V operating permits program was submitted by the Nevada Division of Environmental Protection, on behalf of Washoe, on November 18, 1993 and found to be complete on January 13, 1994. The regulations that comprise the program were adopted by the Washoe County District Board of

Health on October 20, 1993. EPA proposed interim approval, in accordance with § 70.4(d), on August 24, 1994 (59 FR 43523) on the basis that the program "substantially meets" part 70 requirements. The analysis in the proposed document remains unchanged and will not be repeated in this final document. The program deficiencies identified in the proposed document, and outlined below, also remain unchanged and must be corrected for the District to have a fully approvable program.

At the time of proposal, EPA believed that an implementation agreement would be completed prior to final interim approval. EPA and Washoe have not yet finalized the implementation agreement, however, but are working to do so as soon as practicable.

As discussed in the proposed document, Washoe has authority under State and local law to issue a variance from State and local requirements. The EPA would like to reiterate that the Agency has no authority to approve provisions of state or local law that are inconsistent with the Act, and EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70.

#### B. Public Comment

EPA received one public comment regarding the proposed approval of Washoe's preconstruction permitting program for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a District rule implementing EPA's section 112(g) regulations. In opposition to the proposed action, one commenter argued that Washoe should not, and cannot, implement section 112(g) until: (1) EPA has promulgated a section 112(g) regulation; and (2) the District has a section 112(g) program in place.

EPA disagrees with the commenter's contention that section 112(g) does not take effect until after EPA has promulgated implementing regulations. The statutory language in section 112(g)(2) prohibits the modification, construction, or reconstruction of a source after the effective date of a title V program unless MACT (determined on a case-by-case basis, if necessary) is met. The plain meaning of this provision is that the prohibition takes effect on the effective date of title V regardless of whether EPA or a state has promulgated implementing regulations.

The EPA has acknowledged that states may encounter difficulties

implementing section 112(g) prior to the promulgation of final EPA regulations (See June 28, 1994 memorandum entitled, "Guidance for Initial Implementation of Section 112(g)," signed by John Seitz, Director of the Office of Air Quality Planning and Standards.) EPA has issued guidance, in the form of a proposed rule, which may be used to determine whether a physical or operational change at a source is not a modification either because it is below *de minimis* levels or because it has been offset by a decrease of more hazardous emissions. See 59 FR 15004 (April 1, 1994). The EPA believes the proposed rule provides sufficient guidance to Washoe and sources until such time as EPA's section 112(g) rulemaking is finalized.

The EPA is aware that Washoe lacks a program designed specifically to implement section 112(g). However, Washoe does have authority to regulate hazardous air pollutants (HAP) in its preconstruction review program, and hence, the preconstruction review program can serve as a procedural vehicle for rendering a case-by-case MACT or offset determination federally enforceable. The EPA believes Washoe's preconstruction review program will be adequate because it will allow Washoe to select control measures that would meet MACT, as defined in section 112, and incorporate those measures into a federally enforceable preconstruction permit. By approving Washoe's preconstruction review program under the authority of title V and part 70, EPA is clarifying that it may be used for the purpose of implementing section 112(g) during the transition period.

One consequence of the fact that Washoe lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from those in section 112(g). However, whether a particular source change qualifies as a modification, construction, or reconstruction for section 112(g) purposes will be determined according to the statutory provisions of section 112(g), using the proposed rule as guidance. As noted in the June 28, 1994 guidance, EPA intends to defer wherever possible to a state's judgement regarding applicability determinations. This deference must be subject to obvious limitations. For instance, a physical or operational change resulting in a net increase in HAP emissions above 10 tons per year could not be viewed as a *de minimis* increase under any interpretation of the Act. The EPA would expect Washoe to issue a preconstruction permit containing a case-by-case determination

of MACT in such a case even if review under its own preconstruction review program would not be triggered.

#### C. Interim Approval and Implications

##### 1. Title V Operating Permits Program

The EPA is granting interim approval to the operating permits program submitted to EPA by the Nevada Division of Environmental Protection, on behalf of Washoe, on November 18, 1993. The District must make the following changes to receive full approval:

(1) Revise insignificant activity provisions so that they comply with § 70.5(c). Specifically, rule 030.905(B)(3) must state that any activity at a title V facility that is subject to an applicable requirement may not qualify as an insignificant activity. Because Washoe defines insignificant activities by size, both rule 030.020(C)(4) and the application form must require the applicant to list all insignificant activities in enough detail to determine applicability and fees, and to impose any applicable requirements.

(2) Revise 030.020 to state that each application must contain the following information: (1) Description of any processes and products associated with alternate scenarios (§ 70.5(c)(2)); (2) description of compliance monitoring devices or activities (§ 70.5(c)(3)(v)); (3) when emissions trading provisions are requested by a source, proposed replicable procedures and permit terms (§ 70.4(b)(12)(iii)); and (4) a statement that the source will, in a timely manner, meet all applicable requirements that will become effective during the permit term (§ 70.5(c)(8)). EPA has also noted in the Technical Support Document recommended revisions to Washoe's permit application form so that the form will better reflect the information required by regulation. These recommended revisions, however, are not required for full approval. In addition, rule 030.020 must clearly require that any application form, report, or compliance certification submitted in the permit application include a certification based on information and belief formed after reasonable inquiry. (§ 70.5(d))

(3) Add a provision to the rule that imposes a general duty on the permit applicant to submit supplementary facts or corrected information upon becoming aware of any failure to submit relevant facts or submittal of incorrect information. (§ 70.5(b))

(4) Revise 030.930 to provide public notice "by other means if necessary to assure adequate notice to the affected public." (§ 70.7(h)(1))

(5) Revise 030.960(C)(8) to state that the certifications must be based on information and belief formed after reasonable inquiry. (§ 70.6(c)(1) and § 70.5(d))

(6) Revise 030.970(B) to state that schedules for compliance shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order.

(§ 70.5(c)(8)(iii)(C) and § 70.6(c)(3))

(7) Part 70 prohibits sources from implementing significant permit modifications prior to final permit action unless the changes have undergone preconstruction review pursuant to section 112(g) or a program approved into the SIP pursuant to part C or D of title I, and the changes are not otherwise prohibited by the source's existing part 70 permit. Washoe's regulations require sources to submit applications for significant permit modifications 6 months prior to implementing the change, yet final permit action may not occur until 9 months after receipt of a complete application. Hence, rule 030.950(E) must be revised to eliminate the 3 month time frame that sources are able to implement significant permit modifications without revised permits. (§ 70.5(a)(1)(ii))

## 2. Implications of Title V Interim Approval

As a result of today's final interim approval of Washoe's part 70 program, the requirement to submit a permit application to Washoe applies to all part 70 sources, as defined in the approved program, within Washoe's jurisdiction, except for any source of air pollution over which a federally recognized Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-55818 (November 9, 1994).

This interim approval, which may not be renewed, extends until February 5, 1997. During this interim approval period, Washoe is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in Washoe County. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If Washoe fails to submit a complete corrective program for full approval by August 5, 1996, EPA will start an 18-month clock for mandatory sanctions. If Washoe then fails to submit a corrective program that EPA finds complete before

the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Washoe has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of Washoe, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Washoe has come into compliance. In any case, if, six months after application of the first sanction, Washoe still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Washoe's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Washoe has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Washoe, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Washoe has come into compliance. In all cases, if, six months after EPA applies the first sanction, Washoe has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Washoe has not submitted a timely and complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the Washoe program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for Washoe County upon interim approval expiration.

## 3. District Preconstruction Permit Program Implementing Section 112(g)

The EPA is approving Washoe's preconstruction permitting program found in District rules 030.000 and 030.002 under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a District rule implementing EPA's section 112(g) regulations. This approval is limited in

duration and will expire 12 months after EPA promulgates section 112(g) regulations.

## 4. Program for Delegation of Section 112 Standards as Promulgated

The EPA is approving under section 112(l)(5) and 40 CFR section 63.91 Washoe's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Washoe has informed EPA that it intends to obtain the regulatory authority necessary to accept delegation of section 112 standards by incorporating section 112 standards into District regulations by reference to the Federal regulations. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Washoe and EPA. This program for delegations only applies to sources covered by the title V program.

## III. Administrative Requirements

### A. Docket

Copies of Washoe's submittal and other information relied upon for the final interim approval, including the one public comment received and reviewed by EPA on the proposal, are contained in docket number NV-WSH-94-1-OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

### B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

### C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

## List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 16, 1994.

**Felicia Marcus,**

*Regional Administrator.*

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 70—[AMENDED]**

1. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Nevada in alphabetical order to read as follows:

#### **Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs**

\* \* \* \* \*

#### **Nevada**

(a) (Reserved)

(b) Washoe County District Health Department: submitted on November 18, 1993; interim approval effective on March 6, 1995; interim approval expires February 5, 1997.

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[FR Doc. 95-253 Filed 1-4-95; 8:45 am]

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#### **40 CFR Part 261**

[SW-FRL-5130-6]

#### **Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is granting a final exclusion from the lists of hazardous wastes contained in EPA regulations for certain solid wastes generated at Bethlehem Steel Corporation (BSC), Sparrows Point, Maryland. This action responds to a delisting petition submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations, and under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

**EFFECTIVE DATE:** January 5, 1995.

**ADDRESSES:** The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, and is available for viewing (room

M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The reference number for this docket is "F-94-B8EF-FFFFF". The public may copy material from any regulatory docket at no cost for the first 100 pages, and at \$0.15 per page for additional copies.

**FOR FURTHER INFORMATION, CONTACT:** For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 412-9810. For technical information concerning this notice, contact Shen-yi Yang, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260-1436.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

###### **A. Authority**

Under §§ 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that:

- (1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and
- (2) No other hazardous constituents or factors that could cause the waste to be hazardous are present in the wastes at levels of regulatory concern.

###### **B. History of This Rulemaking**

Bethlehem Steel Corporation, located in Sparrows Point, Maryland, petitioned the Agency to exclude from hazardous waste control its chemically stabilized wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006. After evaluating the petition, EPA proposed, on March 4, 1994, to exclude BSC's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 59 FR 10352). This rulemaking finalizes the proposed decision to grant BSC's petition.

##### **II. Disposition of Delisting Petition**

Bethlehem Steel Corporation, Sparrows Point, Maryland.

###### **A. Proposed Exclusion**

Bethlehem Steel Corporation (BSC), located in Sparrows Point, Maryland, is involved in the production of tin and chromium plated parts and steel strip. BSC petitioned the Agency to exclude, from hazardous waste control, its chemically stabilized wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006—

"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents of concern for EPA Hazardous Waste No. F006 waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed) (see Part 261, Appendix VII).

In support of its petition, BSC submitted:

- (1) Detailed descriptions of its manufacturing, waste treatment, and stabilization processes, including schematic diagrams;
  - (2) Material Safety Data Sheets (MSDSs) for all trade name products used in the manufacturing and waste treatment processes;
  - (3) Results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24, nickel, cyanide, zinc, and sulfide from representative samples of the dewatered (unstabilized) filter cake and the stabilized filter cake;
  - (4) Results from the EP Toxicity Test and the Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) for the eight TC metals (except for barium and selenium) and nickel from representative samples of the dewatered (unstabilized) filter cake, uncured stabilized filter cake, and the cured stabilized filter cake;
  - (5) Results from total oil and grease analyses from representative samples of the dewatered (unstabilized) filter cake and stabilized filter cake;
  - (6) Results from the Multiple Extraction Procedure (MEP, SW-846 Method 1320) for the eight TC metals (except for barium and selenium) and nickel from representative samples of the stabilized filter cake;
  - (7) Test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity;
  - (8) Results from the TCLP analyses for the TC volatile and semivolatile organic compounds from representative samples of the dewatered (unstabilized) filter cake; and
  - (9) Results from total constituent analyses for hexavalent chromium from representative samples of dewatered (unstabilized) filter cake.
- The Agency evaluated the information and analytical data provided by BSC in support of its petition and determined that the hazardous constituents found in